

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**Sable Networks, Inc. and
Sable IP, LLC,**

Plaintiffs,

v.

Cloudflare, Inc.,

Defendant.

**Civil Action No.
6:21-cv-00261-ADA**

JURY TRIAL DEMANDED

DEFENDANT CLOUDFLARE, INC.'S ARCTIC CAT NOTICE

Cloudflare, Inc. (“Cloudflare”) hereby provides notice to Sable Networks, Inc. and Sable IP, LLC (collectively, “Sable”) concerning certain “patented articles” it believes (based on Sable’s allegations) have been, and/or continue to be, unmarked. If these articles were/are unmarked, Sable is precluded from recovering pre-notice damages in this case. 35 U.S.C. § 287(a).

“There is no dispute that the patentee bears the burden of pleading and proving he complied with § 287(a).” *Arctic Cat Inc. v. Bombardier Recreational Products Inc.*, 876 F.3d 1350, 1367 (Fed. Cir. 2017). Cloudflare, however, recognizes that it “bears an initial burden of production to articulate the products it believes are unmarked ‘patented articles’ subject to § 287.” *Id.* As the Federal Circuit has recognized, “this is a low bar” given that the “alleged infringer’s burden is a burden of production, not one of persuasion or proof.” *Id.* In accord with the Federal Circuit’s

guidance in *Arctic Cat*, for U.S. Patent No. 6,954,431,¹ U.S. Patent No. 7,012,919,² and U.S. Patent No. 8,243,593,³ Cloudflare identifies the following “patented articles” it believes (based on Sable’s allegations) to be unmarked:

Caspian Networks Inc.

- **’431, ’919, and ’593 patents:** Caspian Networks Inc.’s Apeiro router, including at least Releases 3.1-3.11 (*see, e.g.*, SBL-CLF_023457 at 23463). ECF No. 1 at 5 (“The Apeiro, a flow-based router, can identify the nature of a packet – be it audio, text, or video, and prioritize it accordingly. The Apeiro included numerous technological advances including quality of service (QoS) routing and flow-based routing.”); Ex. A (press release titled “Caspian Networks Introduced Apeiro Flow-Based Router for Service Provider Networks,” stating that “These capabilities are enabled by sophisticated custom ASICs and patented state storage breakthroughs.”).
- **’431, ’919, and ’593 patents:** Caspian Networks Inc.’s A50 Media Controller. *See, e.g.*, Ex. B (“Using patented flow-state technology, it identifies, tracks, enforces assigned quality of service (QoS) parameters, and maintains state data about every traffic flow as it enters and transits the network.”); Ex. C (“Caspian’s patented Flow-State QoS technology enables Caspian Media Controllers to do what no other routers, switches, or networks appliances can do—examine and process every single IP traffic flow entering the network.”).
- **’431, ’919, and ’593 patents:** Caspian Networks Inc.’s A120 Media Controller. *See, e.g.*, Ex. D (“Using patented flow-state technology, the A120 media controller identifies, enforces assigned QoS parameters, and maintains state data about every traffic flow as it enters and transits the network.”).

Sable Networks, Inc.

- **’431, ’919, and ’593 patents:** Sable Networks, Inc.’s Sable Networks SPI. *See, e.g.*, ECF No. 1 at 5-6 (“Sable Networks, Inc. was formed by Dr. Sang Hwa Lee to further develop and commercialize the flow-based networking technologies

¹ According to Sable’s Complaint, “[t]he inventions disclosed in the ’431 patent improve the quality of service in data transmissions over a computer network by relying on per micro-flow state information that enables rate and delay variation requirements to be within set quantified levels of service.” ECF No. 1 at 11.

² According to Sable’s Complaint, “[t]he inventions taught in the ’919 patent achieve improvements in intelligent network traffic engineering protocols by providing load balancing based on the utilization of individual label switched paths.” ECF No. 1 at 15.

³ According to Sable’s Complaint, “[t]he inventions disclosed in the ’593 patent teach technologies that permit the identification and control of less desirable network traffic.” ECF No. 1 at 17.

[REDACTED]

developed by Dr. Roberts and Caspian Networks. ... [S]able Network, Inc.'s ASICs include the Sable Networks SPI, which enables 20 Gigabit flow processing.”).

- **'431, '919, and '593 patents:** Sable Networks, Inc.'s S-Series Service Controllers, including at least models S20, S80, and S240. *See, e.g.*, ECF No. 1 at 5-6 (“Sable Networks, Inc. was formed by Dr. Sang Hwa Lee to further develop and commercialize the flow-based networking technologies developed by Dr. Roberts and Caspian Networks. ... [S]able Networks, Inc. developed and released S-Series Service Controllers (*e.g.*, S80 and S240 Service Controller models) that contain Sable Networks’ flow-based programmable ASICs, POS and Ethernet interfaces, and carrier-hardened routing and scalability from 10 to 800 Gigabits.”); Ex. E (discussing S-Series Service Controllers: “Sable Networks leverages patented technology to empower carriers to analyze, optimize and manage network usage on a session, application and subscriber basis.”); Ex. F (similar); Ex. G (similar).
- [REDACTED]

- **'431 patent:** [REDACTED]

- **'919 patent:** [REDACTED]
- [REDACTED]

- **'593 patent:** [REDACTED]

- [REDACTED]
- [REDACTED]
- '919 patent: [REDACTED]

- '593 patent: [REDACTED]

- [REDACTED]
- '431 patent: [REDACTED]

- '593 patent: [REDACTED]

- [REDACTED]
- '431 patent: [REDACTED]

- '919 patent: [REDACTED]

- [REDACTED]
- [REDACTED]
- '593 patent: [REDACTED]

- [REDACTED]
- '919 patent: [REDACTED]

- '593 patent: [REDACTED]

- [REDACTED]
- '919 patent: [REDACTED]

- '593 patent: [REDACTED]

- 
-
- 
- '431 patent: 

By this Notice Cloudflare has met its *Arctic Cat* burden of production, identifying the “patented articles” it believes (based on Sable’s allegations) to be unmarked. Sable now “bears the burden to prove the products identified do not practice the patented invention.” *Arctic Cat Inc.*, 876 F.3d at 1367.

Dated: March 28, 2022

Respectfully submitted,



STEVEN CALLAHAN

Texas State Bar No. 24053122

scallahan@ccrglaw.com

CHRISTOPHER T. BOVENKAMP

Texas State Bar No. 24006877

cbovenkamp@ccrglaw.com

ANTHONY M. GARZA

Texas State Bar No. 24050644

agarza@ccrglaw.com

C. LUKE NELSON

Texas State Bar No. 24051107

lnelson@ccrglaw.com

JOHN HEUTON

Admitted *pro hac vice*

jheuton@ccrglaw.com

CHARHON CALLAHAN

ROBSON & GARZA, PLLC

3333 Lee Parkway, Suite 460

Dallas, Texas 75219

Telephone: (214) 521-6400

Telecopier: (214) 764-8392

Counsel for Defendant Cloudflare, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on March 28, 2022, I served the foregoing by ECF and e-mail on the following counsel for Plaintiffs:

Dorian S. Berger, Esq.
Daniel P. Hipskind, Esq.
BERGER & HIPSKIND LLP
9538 Brighton Way, Ste. 320
Beverly Hills, California 90210
Telephone: 323-886-3430
Telecopier: 323-978-5508
dsb@bergerhipskind.com
dph@bergerhipskind.com

Elizabeth L. DeRieux, Esq
CAPSHAW DERIEUX, LLP
114 E. Commerce Ave.
Gladewater, Texas 75647
Telephone: 903-845-5770
ederieux@capshawlaw.com

A handwritten signature in black ink, appearing to read "St Callahan", written over a horizontal line.

STEVEN CALLAHAN